National Association of
NAB
BROADCASTERS

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EX PARTE PRESENTATION

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 97-182

Dear Ms. Salas:

Today and yesterday representatives of the National Association of Broadcasters presented copies of the attached documents to various FCC personnel during our discussions with these persons concerning the above-referenced general rule making. The schedule of these discussions is provided below:

November 19: Steven Kaminer, Interim Legal Advisor to Commissioner Furchtgott-Roth; Jane Mago, Senior Legal Advisor to Commissioner Powell; Susan Fox, Senior Legal Advisor to Chairman Kennard; and Anita Wallgren, Legal Advisor to Commissioner Ness.

November 20: Rick Chessen, Senior Legal Advisor to Commissioner Tristani.

These documents reflect the contents of comments filed by NAB and other parties in the above-referenced rule making. Attached are an "original" and 10 copies of each document. Please associate these materials with the above-referenced record.

Please contact the undersigned directly if you have any questions concerning this submission made in compliance with Section 1.1206 (b) of the Commission's Rules.

Sincerely,

Barry D. Umansky

Enclosures

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National Association of NAB BROADCASTERS

The FCC's "Tower Zoning Preemption Rule Making"-- Facts and Fictions

Broadcasters are now developing and carrying out business plans necessary to comply with the federally mandated conversion of existing over-the-air broadcast TV stations to digital television ("DTV") technology. The conversion will require *every* television station to employ a new DTV transmission antenna. Many stations in the top ten television markets, including several in the Washington, D.C. market, have made commitments to offer high definition and other digital television services by the fall of 1998. The estimated conversion cost for each station is considerable. But, DTV will afford the viewers of free, over-the-air television with the highest quality picture and sound, plus new text, data and other digital services.

Local zoning/land use issues will arise regardless of whether new DTV antennas are mounted on existing towers or new towers are built. Broadcasters have petitioned the FCC to adopt rules that will hasten the local approval process because of the federal government's ambitious DTV "rollout" schedule and due to widespread past and current delays and obstacles in the local approval process. These issues address general federal communications policy, and broadcasters are urging that these "preemption" rules apply to all broadcast tower/antenna siting and modification -- for television and radio. The FCC has begun a rule making that proposes the rules recommended by broadcasters.

OVERALL GOALS OF THE RULE MAKING

- Persuade local authorities to review and render decisions within a reasonable time
- Eliminate duplicative regulation (specifically the rule making would end local denials on signal interference, electromagnetic energy health effects or tower appearance/height restrictions that are already substantially regulated at the federal level)
- Adopt rules that place finite, but reasonable time limits on local decision making

FACT VS. FICTION

FICTION: The rule making proposes to prevent local authorities from exercising local review of zoning and land use.	**FACT:** The rule making goal is to persuade local authorities to exercise their local review of zoning and land use and render decisions within a reasonable time frame
FICTION: The rule making attempts to preempt all local decision making through federal intervention	**FACT:** Federal intervention would only occur where local authorities fail to render a decision promptly or choose to regulate an area that is already subject to thorough federal regulation
FICTION: The rule making forces local authorities to make decisions	**FACT:** The rules would adopt finite, but reasonable, time limits on municipalities in their decision-making process regarding construction or modification of a broadcast tower.
FICTION: The rule making will prevent local public hearings	**FACT:** The rule making will not eliminate local public hearings. However, local officials would not be allowed to "decide not to decide."
FICTION: DTV conversion will require placing new 2,000-foot towers across the country	**FACT:** • The effect of DTV conversion in terms of the number and location of very tall towers will not be significant • Many existing stations will use existing towers with modest improvements and modifications • Existing 2,000-foot towers are located in less populated areas • There is no general plan for an "invasion" of 2,000-foot towers in metropolitan areas • New towers will be able to support "co-location" of several DTV station antennae and several radio station antennae • There may be a diminution of TV towers over time

NEED FOR ACTION

Together, broadcasters and local officials can work cooperatively, and promptly, in ushering in the digital age for local broadcasters and viewers, and also providing for more expeditious and general improvement of free over-the-air broadcast service -- radio and TV.

DTV Conversion: Realities Concerning Towers

FACTS:

- DTV transition will require every television broadcaster to do *some* type of construction activity to convert to digital television.
- It is estimated that 66% of existing television broadcasters will require new or upgraded towers in order to support DTV antennas and related hardware.
- According to the FCC's FM and TV engineering databases, as of Spring 1997, there were 1,320 FM antennas (or 18% of the total number of FM stations) located at the same geographical coordinates as at least one TV antenna.
- It may be presumed that hundreds of these FM stations will have to be relocated as a consequence of the installation of DTV antennas on TV towers.

POSSIBLE CHANGES/STATION OPTIONS:

- NAB/MSTV estimates that around 1000 towers will need to be constructed or upgraded.
- This does *not* mean that 1000 NEW TOWERS will be constructed.
- There are several options for broadcasters during the DTV transition:
  1. BUILD A NEW TOWER ON NEW LAND
  2. BUILD A NEW TOWER ON EXISTING LAND
  3. STRENGTHEN EXISTING TOWER
  4. MOUNT NEW ANTENNA ON EXISTING TOWER WITH NO STRENGTHENING NEEDED
  5. OTHER CHANGES: RELOCATION OF FM ANTENNAS DISPLACED BY NEW DTV ANTENNAS

TYPICAL EXAMPLES:

- The 26 commercial stations that have voluntarily committed to construct DTV facilities in the top ten markets by November 1, 1998, have filed progress reports with the FCC. Within these progress reports, the stations have indicated possible changes to their towers due to the conversion:
  - WRC (Washington D.C.) and WXIA (Atlanta) indicate that current tenants on their towers will have to relocate to make room for their DTV equipment.
  - WNBC (New York) and WMAQ (Chicago) report they are having difficulty finding suitable locations for their DTV antennas.
  - WCVB (Boston) is waiting for the FAA to approve an increase in the height of the tower on which it leases space.
  - Eleven of the 26 stations reported their existing towers are being strengthened and/or raised.
  - Two stations are still studying their towers and are unsure of what modifications may be needed.
  - KYW and WPVI (Philadelphia) are jointly building a new tower that they will share.
  - WWJ (Detroit) is building a new tower.
  - KXAS (Dallas-Fort Worth) has completely rebuilt its tower.
- As one example, in Vermont there are currently three stations with three towers (plus a small tower that provides emergency services) that are located on Mount Mansfield.
  - The stations are currently studying what modifications are going to be made.
  - One master site plan would provide for a single, taller tower that would provide space for all of the station's antennas.
  - There is not a plan to increase the number of towers on Mount Mansfield.

Cellular Towers vs. Broadcast Towers

Comparing Preemption Procedures

CELLULAR/PCS	BROADCAST
➢ State/Local governments have the authority to decide where personal wireless telecommunications service facilities will be placed, constructed and modified. ➢ However, local regulators "shall not unreasonably discriminate among providers of functionally equivalent services" and "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." ➢ Local regulators must act on any request within a reasonable time, taking into account the nature and scope of the request. ➢ Local regulators are preempted from regulating the siting of wireless towers on the basis of RF emissions to the extent that the facilities comply with the Commission's own RF emission regulations.	➢ The NPRM does not propose to end state/local government authority over the placement, construction and modification of broadcast towers. ➢ The proposed rule would impose reasonable time restraints in which the local regulators would have to act on any request from a broadcaster. ➢ The proposed rule will preempt local regulators from denying requests based on signal interference, electromagnetic energy health effects or tower appearance/height restrictions – areas already regulated at the federal level.

Comparing Towers

	CELLULAR/PCS	BROADCAST
# TOWERS IN LOCAL AREAS	➢ Cellular providers require many towers to cover service area because they use low powered transmitters. ➢ Even greater numbers of antennas are needed by PCS providers to serve a geographic area. ➢ FCC estimates local governments can expect approximately eight discrete cellular and PCS licenses to seek antenna facilities in each community (consolidation of providers may reduce this number).	➢ FM and TV stations only use one antenna per station. ➢ Sometimes TV and FM antennas share a tower. ➢ AM stations' towers act as "antennas" themselves. ➢ Some AM stations employ more than one antenna (depending on the nature of their FCC license), but these antennas are all located at a single geographic site.
TOTAL # OF TOWERS	➢ There are over 22,000 cell sites operating within the U.S. (and its possessions and territories). ➢ As more wireless service providers enter the marketplace, the number of antenna structures will likely increase. ➢ Additionally, as more people use cellular services, more antenna structures probably will be needed to maintain the power of the cell site transmitters.	➢ There are probably over 20,000 broadcast towers in the U.S. ➢ This number will most likely stay the same or decrease with the conversion to DTV.
CO-LOCATION	➢ It is "technologically possible" for cellular, SMR and PCS providers to share towers. ➢ The different providers may not be willing to share tower space with each other due to the highly competitive marketplace.	➢ As stated above, many towers have several antennas mounted on a single tower.

* The information regarding cellular/PCS towers was found in the FCC's Wireless Telecommunications Bureau Fact Sheet and Fact Sheet #2: "National Wireless Facilities Siting Policies."

COSTS OF COMPLIANCE WITH LOCAL ZONING REGULATIONS

Broadcasters in their attempts to provide the best and most thorough service to their local communities frequently try to make improvements to their technical facilities. One frequent improvement is to construct or improve their transmission towers. In order to complete that work, broadcasters work with local zoning boards and commissions to comply with local regulations. There are substantial explicit and hidden costs from dealing with these local governing boards. They include:

1. The direct engineering and legal costs of dealing with local governing boards. Examples of these costs and their amounts are listed in the attached table.
2. The opportunity costs to broadcasters from endless delays in these approval processes.
3. The opportunity costs to broadcasters who decide **not** to even apply for tower improvements since they expect long delays and opposition
4. The lost benefits to consumers who do not receive improved service during the delayed approval process, and, moreover, when broadcasters are discouraged from even trying to improve their facilities.

National Association of Broadcasters

CITED COSTS ESTIMATES DUE TO PLANNING AND ZONING PROCESSES

Commentator	Types of Costs	Cost Estimate
Thomas Moffit, WVCH Communications	Legal & expert witness fees	$350,000
Results Radio of Sonoma	Demonstration that tower project is environmentally sound	Over $100,000
KMTV 3, Omaha	Modification to existing tower for DTV antenna (in lieu of new tower)	$266,000
Michael Levine, Glicken Broadcasting	Local legal costs	$100,000
Joint Comments of Named State Broadcasters – example of WBUX-AM, Doylestown, PA	Legal fees and costs of scientific studies	$100,000
The Cromwell Group	Amount to be paid to neighbor for possibility of tower falling	$100,000
WAWZ –FM, Pillar of Fire	Responding to local concerns to replace existing tower	Over $650,000
Silver King Broadcasting of Massachusetts	To date legal and consulting costs	$120,000
APTS – example of WVPT-TV, Staunton, VA	Ordinance inspection and landscaping requirements	$50,000
McGraw Hill – KMGH-TV, Denver	Cost savings from **not** building a new tower and adding a new antenna to existing tower	$1,600,000
Children's Broadcasting Corp. – KPLS- AM	Engineering, biological and environmental reports, option fees, filing fees with the County, local consulting and outside legal fees	$240,000
Fordham University – WFUV - FM	Out-of-pocket costs in re local proceedings	$160,000
New York Times – WHNT-TV	Additional costs of converting to DTV due to forced new tower in lieu of adding antenna to existing tower	$1,800,000
Cosmos Broadcasting – WAVE- TV	Legal consulting costs of building new tower in late 80s	$280,282
Fant Broadcasting	Cost of Environmental Impact Statement	$100,000 - $250,000